IN THE

Supreme Court of the United States

October Term, 1945

No. 1007-1008

In Bankruptcy

MICHAEL PHILLIP JORDAN,
Petitioner,

vs.

FEDERAL FARM MORTGAGE CORPORATION,
Et Al.,
Respondents.

PETITIONER'S REPLY BRIEF

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Law Briefs—OMAHA LINO-SLUG PRINTING CO—418 So. 15th St.

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REPLY BRIEF OF PETITIONER TO BRIEF OF RESPONDENTS

ARGUMENT

Respondents, preliminary to their argument, state that Petitioner "must be seeking two Writs of Certiorari, although Petitioner prays for only one Writ in the above entitled cause, being numbers 13117 and 13194," and then adds that same shall be considered separately. A reply to this and explanatory thereof will be discussed in Petitioner's argument of 13194, postea.

Reply to Respondents' Argument of 13117

In the first paragraph, Respondents state that Petitioner has presumably filed a certified Transcript of the Record and then states service on three Respondents, naming them, by service on attorneys for those Respondents. The office of the Clerk of this Court will show that there has been filed in his office a printed Transcript of the Record and will also show that service has been made on Wm. W. Graham and Edgar M. Morsman, III, whom the Clerk of the Circuit Court certifies appeared "for the Appellees" (pp. 5 and 6). Also on page 7 that Court in its Order states that those attorneys "for Appellees" argued the case upon submission.

In view of such a record those attorneys are not in a position to claim they did not and do not now represent all Respondents, or that service on them is not a sufficient service as to all Respondents.

Prior Adjudication, Loss of Title to Ranch and Rental of Ranch

On pages 2 to 5 the contention is made, first, that Petitioner has lost title to his ranch and that it has been previously so adjudicated; second, that he voluntarily rented the same and was no longer a farmer and has used the rental for his personal use, and cites three cases as so holding.

As to the first, Petitioner, in his Debtor's Petition, schedules the ranch as owned by him. His proceedings were dismissed because he was not a farmer.

There was no trial or adjudication as to his ownership. Therefore his petition stands as a verity as there

are many ways in which the sheriff's deed may be void or voidable, viz., if issued when bankruptcy proceedings were pending or otherwise illegally issued. But even though all ownership in the ranch was lost by the issuance of the sheriff's deed, still he has ownership in the ranch because of his right of redemption under the foreclosure of the two mortgages which he gave to the Federal Land Bank of Omaha. See "Supplement to Printed Abstract of Record," pages 1 to 3. That bank in its foreclosures is asking personal judgment against Petitioner as the maker of those loans. The right of redemption is property (*Wragg v. Federal Land Bank*, 317 U. S. 325, 63 Sup. Ct. Rep. 273). And the right of redemption before sale is an equitable right of redemption and after sale a statutory right of redemption. *Sayre v. Vander Voost*, 200 Ia. 990, on 993: "Whether exercised before sale or after, the right of redemption is essentially the same." "While the ownership continues the right of redemption continues." "When the ownership ceases the right of redemption ceases likewise of necessity." Therefore, it cannot be said that he has no title to his ranch because of the sheriff's deed, as he claimed ownership in his verified Debtor's Petition and there has been no trial or adjudication holding otherwise and, even if his title was so lost, yet he still has ownership by virtue of his right of redemption from the foreclosure of the mortgages by the Federal Land Bank. Since he filed his original Debtor's Petition in Nebraska, he has acquired three farms in Iowa, thus changing his financial status, whereby the former adjudication is not res judicata. "And a farmer shall be deemed a resident of any county in which such operations occur" (Sec. 75-r, Bankruptcy Act). As he owned three farms in Iowa, he surely had the right to file his Debtor's Petition in Iowa, and as the foreclosure of the mortgages

by the Federal Land Bank vested in him a new ownership, a property right of redemption, the Court was in error in its dismissal. In *Layton v. Thayne,* 144 Fed. (2d) 94, a second mortgage was foreclosed and execution issued, sale had and sheriff's deed issued. Subsequently, mortgagee began the foreclosure of the first mortgage. Held that debtor had a right of redemption and was entitled to have that right of redemption, which was property, administered under Sec. 75-r to s of the Bankruptcy Act.

As to the second voluntary rental of his ranch and use of rentals, the Petitioner was forced to lease his ranch to avoid loss of title through sheriff's sale (R. 12 and 13) and has annually leased for the following three years. The first year's rent was entirely taken by payment into court to satisfy judgment creditors (R. 13). Subsequent rental was used to pay taxes (R. 10), building fence, paint, setting out trees, purchase of windmills and many other expenses (R. 12 and 13). As his creditors were in a position to demand this rent, it is not probable that they allowed it to be diverted from the maintenance of the ranch. Enforced dispossession and termination of farming operations are discussed, and cases cited, in Brief in Support of Petition for Writ, and there is no necessity for repetition (Petition for Writ, p. 11). But if all that is claimed is conceded, yet if the case of *First National Bank, etc., v. Beach,* 301 U. S. 435, 57 Sup. Ct. Rep. 801, is to be regarded as the law, still Petitioner is a farmer. In that opinion this Court states, as to the definition of a farmer in Sec. 75-r: "The two are not equivalent. They are used by way of contrast." "The results will be the same, however, though the farming and the leasing be viewed as disconnected and not as parts of a composite whole.

In that view the farming is still the business; the leases are then investments more profitable than the business but leaving it unchanged. A farmer remains a farmer, just as a lawyer remains a lawyer, though the returns of his investments, while not enough to keep him going, are larger, none the less, than the profits of his labor." In substance, the facts here are a duplicate of the Beach case. Both debtors had for many years lived on and devoted all their time to operations on the land owned. Finally Beach leased nearly all his land, and here debtor was forced to lease all. Both continued to devote all their time to and on their real estate; Beach turned to gardening and poultry, and Petitioner to maintaining his 10,000-acre ranch by setting out trees, building fences, painting, buying windmills and many other ways. Neither turned to any other employment; both continued to have but one concern, to save their land. The two records are too similar to permit of distinction. If it is contended that Beach is a farmer because of his gardening, then Petitioner must still be a farmer because of his work on his land. As said in the Beach case, the leasing did not change the vocation. Respondents cite the Beach case and two others to sustain their contention, but fail to even attempt to set out their application or in what manner they offer any authority for the contention made here or to support the opinion of the Circuit Court. In *Shyvers v. Security First Natl. Bank,* 108 Fed. (2d) 611, cited, debtor had been for years a resident of London, England, and inherited a ranch of some 9,300 acres in California from her father, who died about the time of the World War. She filed her Petition in 1938. She had never been a farmer. Here there is no denial but that Petitioner was a farmer for years before he was compelled to lease his ranch to secure funds to avoid its loss by sheriff's sale. He persistently devoted

all his time to it after dispossessed, just as did Beach. His status was the same as that of Beach. Debtor Shyvers never was a farmer and never devoted any of her time to farming operations. Petitioner continued to be a farmer, just as Beach continued to be such. Shyvers never was more than a non-resident land owner. An analysis of the facts leaves a comparison as absurd. In the *Mulligan v. Federal Land Bank Case*, 129 Fed. (2d) 438, cited, debtor, in about May, 1937, leased her land and moved to Alliance, Nebraska, with her husband, where they resided for some three years, leasing their land during that time. On June 4, 1940, she filed a Debtor's Petition. In renting their farm and moving to Alliance they voluntarily determined to discontinue farming and, of necessity, could no longer claim to be such. It was an election on their part to terminate farming operations. Had they purchased and operated a drug store in Alliance they could no longer claim to be farmers. The facts would prove otherwise. But it would not be the operation of the drug store that changed their status. It would be their determination to conclude farming, and the operation of the store would be proof of that determination. The facts in the two cases preclude any claim of similarity. There may be a difference of opinions, but undisputed facts are a verity.

As to the Second Appeal

There were two appeals from the District to the Circuit Court involving the same parties and the same subject matter. The first, No. 13117, was an appeal from a judgment dismissing Debtor's Petition, deciding he was not a farmer. After such appeal was perfected, debtor filed in the District Court a Motion for Rehearing and Petition for Proceedings under Chapter XII of the Bankruptcy Act, which was denied by the District Court, and

appeal perfected to the Circuit Court. The two appeals were heard jointly and opinion so rendered. The opinion (see Clerk's Transcript, p. 9) recites:

> "After perfecting his appeal to this court from the order of the District Court dismissing his petition, the debtor filed in the District Court a pleading entitled 'Motion for Re-Hearing and Petition for Proceedings under Chapter XII of the Bankruptcy Act.' The District Court dismissed this pleading on the ground that it came too late, and the debtor appealed from this order of dismissal. Both appeals were consolidated for hearing in this court."

and concludes with the following:

> "The judgment of the District Court dismissing the debtor's petition under Section 75 of the Bankruptcy Act in No. 13,117 is affirmed. The appeal from the order of the District Court denying the debtor's motion for a new trial in No. 13,194 is dismissed."

In the first appeal, No. 13117 (Tr. 36), Statement of Point III, it is alleged that the Court "committed error in dismissing said petition and not administering his estate in bankruptcy as provided in Sec. 75-s or Chapter XII of the Chandler Act." Therefore, in the first appeal debtor was demanding that his estate in bankruptcy be administered under Chapter XII of the Chandler Act if he were not entitled to benefits of Section 75-s; the filing of the Motion for Rehearing in the District Court and Petition for Proceedings under Chapter XII of the Bankruptcy Act was only filed for the purpose of giving the District Court an opportunity to correct its own error and present that issue more prominently in the Circuit Court. Also, since Petitioner's status under Sec. 75-n is that of an adjudicated bankrupt and since he had filed his Amended Petition asking to be adjudged a bankrupt under Sec.

75-s (Tr. 22), he had the right under the Bankruptcy Act to have his estate administered under some chapter of that Act. The Court had no authority in law to deny him such. Having become an adjudicated bankrupt, it became the duty of the Court to administer his estate in bankruptcy and no Motion or Petition, such as the opinion and the record shows he filed, were necessary. The second appeal presented nothing new for the Circuit Court to decide. Petitioner was asking in his first appeal, No. 13117, the benefits of Chapter XII if not entitled to the benefits of Sec. 75 a-s, and was only repeating and emphasizing such in his second appeal, No. 13194. This being true, nothing could be gained by filing in this Court a printed Transcript of the Record and docketing two appeals in this Court, as the issue to the benefits to Chapter XII was clearly involved in the first appeal and that is all and the only issue involved in the second appeal. Petitioner is informed that the Clerk of the Circuit Court has filed with the Clerk of this Court a typewritten transcript in the second appeal, which includes an order of the Circuit Court dated November 6, 1945, in which the motion of appellant to merge the two cases "is hereby granted and this appeal will be considered as submitted to the court for determination with case No. 13117." Also, it contains a judgment entry dated December 27, 1945, in said cause No. 13194, in which it is ordered and adjudged that said appeal "is hereby dismissed," but no reference is needed to said typewritten transcript in No. 13194 to ascertain that nothing more was involved therein than the demand of Petitioner that his estate be administered under Chapter XII of the Bankruptcy Act if he were not entitled as a farmer to the benefits of Sec. 75 r-s.

CONCLUSION

In conclusion, Petitioner contends that the record here discloses a long and persistent struggle on his part to save his ranch, the loss of which will leave him penniless. That he never devoted himself to any other activity or vocation after reaching his majority than the enlargement of his ranch, he now being nearly 70 years of age. The only contention made and which could possibly be made was that he changed his vocation in renting his ranch, when the record shows that he rented it to avoid the sheriff's sale and deed and that all rental then received was paid into court, whereby said loss was avoided. That he has never engaged in any other activity since but has devoted all his time to the care, preservation and saving of his ranch. That he has been judicially denied that which Congress enacted for the benefit of all so situated. As to him, said Act has been judicially repealed.

Respectfully submitted,

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